

12/27/93  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

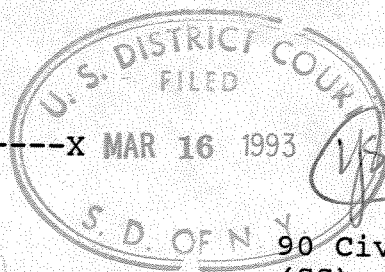
-----X  
JEAN D., et al.,

Plaintiffs

- against -

MARIO CUOMO, as Governor of the  
State of New York, et al.,

Defendants.  
-----X



90 Civ. 0861  
(SS)

SUPPLEMENTAL  
COMPLAINT --  
CLASS ACTION

### PRELIMINARY STATEMENT

1. Plaintiffs reallege each of the paragraphs contained in plaintiffs' complaint, dated February 8, 1990, as amended by the stipulation and order signed by Judge Shirley Wohl Kram on January 23, 1992.

2. Plaintiff now adds a supplemental claim under the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq. The Americans with Disabilities Act was signed into law on July 26, 1990. Title II, 42 U.S.C. § 12131, et seq., became effective on January 26, 1992.

3. This court has jurisdiction of this supplemental claim pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12133.

### FIRST SUPPLEMENTAL CAUSE OF ACTION

4. All defendants are agents or employees of a "public entity" within the meaning of the Americans with Disabilities Act, 42 U.S.C. § 12131(1). Governor Cuomo is Governor of the

State of New York. The other defendants are employees of the Office of Mental Health, which is a department or agency of the State of New York.

5. Plaintiffs are members of a class of all in-patients at Manhattan Psychiatric Center and Pilgrim Psychiatric Center. Plaintiffs, as in-patients at state psychiatric centers, suffer from mental impairments that substantially limit one of the major life activities of such individuals, have records of such impairments, or are regarded as having such impairments. Some plaintiffs also have other disabilities, including mental retardation and physical impairments such as mobility impairments, visual impairments, and alcohol and substance addiction. Each member of the class thus has one or more disabilities as defined in the Americans with Disabilities Act, 42 U.S.C. § 12111(1).

6. Each plaintiff is a "qualified individual with a disability," who can with or without reasonable accommodation participate in fresh air and exercise on the grounds of the psychiatric center where they reside except in rare circumstances where a treating psychiatrist has found that clinical psychiatric or medical reasons prevent a particular patient from leaving the ward, on a particular day or other period of time.

7. The State of New York, the Office of Mental Health, Manhattan Psychiatric Center, and Pilgrim Psychiatric Center provide some patients with unescorted privileges which allows them regular access to fresh air and exercise.

8. Other patients are denied unescorted privileges because of the severity or acuity of their mental illness or because of the presence of other disabilities. As a result, they are only permitted to leave the wards to go outside for fresh air and exercise if an escort is provided.

9. Patients without unescorted privileges are, by reason of their disabilities, excluded from participation in and denied the benefits of fresh air, the outdoor grounds, outdoor recreational programs, and indoor recreational facilities, including gymnasiums, pools and bowling alleys.

10. The defendants fail to provide patients without unescorted privileges with reasonable accommodations to enable them to participate in and enjoy the benefits of fresh air, the outdoor grounds, outdoor recreational programs, and indoor recreational facilities, including gymnasiums, pools and bowling alleys.

11. The State of New York provides regular access to fresh air and exercise to mentally retarded and developmentally disabled individuals in developmental centers and to prisoners in state prisons.

12. Patients on locked wards at state psychiatric hospitals are, solely by reason of their disabilities, excluded from participation in, denied the benefits of, and subjected to discrimination in access to fresh air and exercise in violation of the Americans with Disabilities Act, Title II, 42 U.S.C. § 12132.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that the court grant the following relief:

1. Declare that defendants' failure to provide members of the plaintiff class with regular access to fresh air and exercise and with access to available recreational facilities discriminates against members of the plaintiff class in violation of the Americans with Disabilities Act, 42 U.S.C. § 2132;

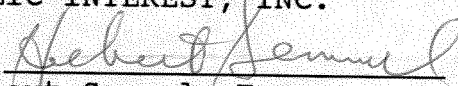
2. Direct, by preliminary and permanent injunction, that defendants immediately provide access to fresh air and exercise on a regular basis to the individual plaintiffs and all members of each subclass;

3. Direct defendants to pay plaintiffs' litigation costs and reasonable attorneys' fees; and

4. Grant such other and further relief as the Court may deem just and proper.

Dated: March 9, 1993  
New York, New York

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PUBLIC INTEREST, INC.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JEAN D. et al.,

Plaintiffs,

-against-

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90 Civ. 0861  
(SS)


AFFIDAVIT OF SERVICE

I, Veronica Matias, being sworn, say: I am not a party to the action, am over 18 years of age and reside at 388 Richmond Terrace, Staten Island, New York 10301. On March 9, 1993, I served the within Supplemental Complaint -- Class Action by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address(es) set forth after each name:

David Cook, Esq.  
Assistant Attorney General  
New York State Department of Law  
120 Broadway  
New York, NY 10271

  
Veronica Matias

Sworn to before me this  
9th day of March, 1993

  
Notary Public

RUTH LOWENKRON  
Notary Public, State of New York  
No. 49-83908  
Qualified in N.Y. County  
Certificate Filed in N.Y. County  
Term Expires July 8, 1993



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March 9, 1993

Office of the Clerk  
United States District Court  
Foley Square  
New York, N.Y. 10007

Re: Jean D. v. Cuomo  
90 Civ. 861 (SS)

Gentlepersons:

Enclosed for filing is plaintiffs'  
Supplemental Complaint. Filing of this complaint  
was authorized by Magistrate Judge Lee by order of  
January 25, 1993.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Herbert Semmel', is written over the typed name.

Herbert Semmel  
Attorney for Plaintiffs

cc: Robert Abrams,  
Attorney General  
Attn: David Cook  
Attorney for Defendant